

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

*Jennifer R. Bockhorst, Assistant United States Attorney, Abingdon, Virginia,
for United States; Jorge Garcia, Pro Se Defendant.*

The defendant, Jorge Garcia, has filed a motion pursuant to 28 U.S.C. § 2255. The United States has filed in response a Motion to Dismiss. The time allotted for Garcia's reply has expired, making his motion ripe for disposition. I find that the United States' motion must be granted.

The defendant was sentenced by this court on May 21, 2009, after pleading guilty to possessing a firearm in furtherance of a drug trafficking offense in violation of 18 U.S.C. § 924(c) (Count Two), and conspiring to distribute controlled substances (Count Three). He received a total sentence of 120 months imprisonment, consisting of 60 months on each count to be served consecutively. There was no appeal.

On June 14, 2016, Garcia filed a motion pursuant to 28 U.S.C. § 2255, contending that his sentence was invalid under the holding by the Supreme Court in *Johnson v. United States*, 135 S. Ct. 2551 (June 26, 2015).¹

In its Motion to Dismiss, the United States asserts that Garcia's 2255 motion should be dismissed because (1) the *Johnson* holding cannot apply to his § 924(c) conviction, because it did not involve a crime of violence, but rather a drug trafficking offense; and (2) his motion is barred by the one-year statute of limitations contained in 28 U.S.C. § 255(f)(1).

I agree that Garcia's *Johnson* claim is without merit and his motion is barred by the statute of limitations. Accordingly, the United States' Motion to Dismiss will be granted and the § 2255 motion will be dismissed.

A separate final order will be entered forthwith.

DATED: May 30, 2017

/s/ James P. Jones
United States District Judge

¹ The motion was filed in this court on June 20, 2016, but it was signed by Garcia on June 14, 2016. Mot. 13, ECF No. 66.